IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

JAMES HIGGINS and **KATRINA MALONE,** individually, and on behalf of other current and former similarly situated employees,
Plaintiffs,

v. Case No.________________

OTB ACQUISITION, LLC, a Delaware Limited Liability Company, **ARGONNE CAPITAL GROUP, LLC,** a Georgia Limited Liability Company, **BORDER HOLDINGS, LLC**, a Delaware Limited Liability Company, and **GOLDEN GATE CAPITAL, INC.,** a California Corporation,
Defendants.

FLSA Opt-In Collective Action

Jury Trial Demanded

COLLECTIVE ACTION COMPLAINT

Plaintiffs, James Higgins and Katrina Malone, individually, and on behalf of all others similarly situated, for their Collective Action Complaint against OTB Acquisition, LLC, a Delaware Limited Liability Corporation, Argonne Capital Group, LLC, a Georgia Limited Liability Corporation, Border Holdings, LLC, a Delaware Limited Liability Corporation and, Golden Gate Capital, Inc., a California Corporation, (hereinafter "OTB" or "Defendants"), allege as follows:

I.

INTRODUCTION

1. This lawsuit is brought against Defendants as a collective action under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*, to recover unpaid straight time wages, unpaid minimum wages, overtime compensation and other damages owed to Plaintiffs

and other similarly situated employees who are members of a class as defined herein and currently or previously employed by Defendants. Further, Defendants are not entitled to rely on the tip credit provisions of the FLSA.

II.

JURISDICTION AND VENUE

2. The FLSA authorizes court actions by private parties to recover damages for violations of the FLSA's wage and hour provisions. Jurisdiction over Plaintiffs' FLSA claims are based on 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

3. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b) and (c) because Plaintiffs were employed by Defendants in this district at all times relevant to this action, Defendants regularly have conducted and continue to conduct business in this district, and have engaged and continue to engage in wrongful conduct alleged herein in this district during all material times in this cause.

III.

CLASS DESCRIPTION

4. Plaintiffs bring this action on behalf of the following similarly situated persons:

> All current and former tipped employees, also classified as "bartenders and servers", of Defendants in the United States who work (or have worked) at Defendants' restaurant(s) at any time during the applicable limitations period covered by this Collective Action Complaint (*i.e.* two years for FLSA violations and, three years for willful FLSA violations) up to and including the date of final judgment in this matter, and who is a Named Plaintiff or elect

to opt-in to this action pursuant to the FLSA, 29 U.S.C. § 216(b).

(Collectively, "the class").[1]

IV.

PARTIES

5. Defendant OTB Acquisition, LLC, is a Delaware Limited Liability Company with its principal address as 2201 W Royal LN (Suite 240), Irving, Texas 75063-3209. OTB Acquisitions, LLC has been an "employer" of Plaintiffs and similarly situated workers, as that term is defined in the FLSA, 29 U.S.C. §203(d), during the relevant period to this action. According to the Tennessee Secretary of State, OTB Acquisition may be served through its registered agent for service of process, CT Corporation System, 800 S. Gay Street, Knoxville, Tennessee 37929-9710.

6. Defendant, Argonne Capital Group, LLC, is a Georgia Limited Liability Company with its principal executive office located at 3060 Peachtree Rd. NW (#400), Atlanta, Georgia, 30305-2242. Argonne Capital Group, LLC has been an "employer" of Plaintiffs and similarly situated workers, as that term is defined in the FLSA, 29 U.S.C. §203(d), during the relevant period to this action. According to the Georgia Secretary of State, Argonne Capital Group, LLC may be served through its registered agent for service of process, Michael A. Klump, 3060 Peachtree RD, NW, (#1560), Atlanta, Georgia, 30305-2242.CT Corporation System, 800 S. Gay Street, Knoxville, Tennessee 37929-9710.

7. Defendant, Border Holdings, LLC, is a Delaware Limited Liability Company. Border Holdings, LLC, has been an "employer" of Plaintiffs and similarly situated workers, as that term is defined in the FLSA, 29 U.S.C. §203(d), during the relevant period to this

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[1] Plaintiffs reserve the right to modify or amend the Class Description upon newly discovered information gathered through the discovery process.

action. According to the Delaware Secretary of State, Border Holdings, LLC may be served through its registered agent for service of process, The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801.

8. Defendant, Golden Gate Capital, Inc., is a California Corporation with its principal offices located at One Embarcadero Center, Suite 3900, San Francisco, California 94111. Golden Gate Capital, Inc., has been an "employer" of Plaintiffs and similarly situated workers, as that term is defined in the FLSA, 29 U.S.C. §203(d), during the relevant period to this action. According to the California Secretary of State, Golden Gate Capital, Inc., may be served through its registered agent for service of process, National Corporate Research, Ltd., 1325 J Street, Sacramento, California 95814.

9. Plaintiff James Higgins was employed by Defendants as a tipped employee at two of its restaurants within this district during the relevant period herein. (Mr. Higgins' Consent to Join this collective action is attached hereto as Exhibit A.)

10. Plaintiff Katrina Malone was employed by Defendants as a tipped employee at one of its restaurants within this district during the relevant period herein. (Ms. Malone's Consent to Join this collective action is attached hereto as Exhibit B.)

11. The class of similarly situated employees consists of all waiters, waitresses and bartenders (a/k/a "servers") employed by Defendants at their On The Border restaurants in the past three years. These similarly situated persons are referred to as "Members of the Class" or "the Class."

12. Defendants constitute an integrated enterprise because Defendants' related activities (i.e. jointly owning and operating On The Border restaurants) performed (either through

unified operation or common control) by any person or persons [are] for a common business purpose as that term is defined in the FLSA, 29 U.S.C. § 203(r).

V.

ALLEGATIONS

13. Defendants own and operate or, have owned and operated, On The Border (OTB) restaurants in numerous states across the United States during the relevant period of this action.

14. The primary function of On The Border (OTB) restaurants is to sell food and beverage items to customers.

15. On The Border (OTB) has been the "employer" of the Plaintiffs and those similarly situated within the meaning of 29 U.S.C. § 203(d).

16. On The Border (OTB) employed Plaintiffs and those similarly situated and was responsible for setting and administering pay and overtime rates, including overtime pay during the relevant period of time in question.

17. The decisions regarding Plaintiffs' and other members of the class' compensation and other terms of employment were made through a centralized management of Defendants' Headquarters located in Irving, Texas.

18. Defendants have had a centralized plan, policy and practice (scheme) of strictly enforcing restricted hours of compensable work per day and per week (budgeted labor) by providing incentives to restaurant managers to stay within or below such budgeted labor on the one hand and, subjecting those managers who failed to stay within such budgeted hours to disciplinary action on the other hand, even though such budgeted labor was/is inadequate to meet the operational demands and needs of its restaurants which, in turn,

forced managers to encourage, entice, condone, induce, permit and/or require Plaintiffs and those similarly situated to perform work, attend meetings and undergo training “off the clock,” as well as forced restaurant managers to require thier tipped employees to perform non-tip producing tasks while clocked-in to its timekeeping system as tipped employees at a tip credit wage and, to perform non-tip producing preparation and maintenance tasks more than 20% of their time while assigned "tables" from which tips could be produced.

19. Defendants have had a centralized plan, policy and practice (scheme) of working Plaintiffs and similarly situated class members "off the clock" and, "editing" their time records, in a variety of ways, all of which constitutes a unified theory of common violations of the FLSA.

20. Throughout their employment with Defendants, Plaintiffs and the Class have been required to give (share) a portion of their tips to non-tip producing employees such as silverware rollers and food runners (a/k/a "Expo" employees) in violation of the FLSA. *See* 29 U.S.C. § 203(m) and 29 C.F.R. § 531.27.

21. Silverware rollers and food runners do not customarily and regularly receive tips (other than those received from servers and bartenders, as noted above.)

22. Silverware rollers’ primary responsibilities include rolling silverware and working in the back of the house and in doing so, they had little, if any, direct interaction with customers.

23. Food runners, also known as "Expo" employees, typically have transported food and beverage items from the restaurants' kitchen and bar to servers and bartenders.

24. As a result of Defendants' unlawful mandatory tip pool policy requiring servers and bartenders to share part of their tips with silverware rollers and food runners, Plaintiffs and the Class were not allowed to retain all of their tips.

25. At all times material to this action, Plaintiffs and those similarly situated are or have been "employees" of Defendants as defined by Section 203(e)(1) of the FLSA and, worked for Defendants within the territory of the Unites States within three (3) years preceding the filing of this lawsuit.

26. At all times material to this action, Defendants have been an enterprise engaged in commerce or in the production of goods for commerce as defined by Section 203(s)(1) of the FLSA, with annual revenue in excess of $500,000.00.

27. At all times material to this action, Defendants have been subject to the pay requirements of the FLSA because it is an enterprise in interstate commerce and its employees are engaged in interstate commerce.

28. At all relevant times material to this action, Defendants have had a uniform job training program for all tipped employees that requires each tipped employee to undergo and successfully complete such training as a condition of being employed as a tipped employee, without being compensated for such time at least at the applicable FLSA minimum wage and overtime rates of pay.

29. At all relevant time's material to this action, Defendants have required Plaintiffs and class members to attend job-related meetings, without being compensated for such time at least at the applicable FLSA minimum wage and overtime rates of pay.

30. At all relevant time's material to this action, Defendants have required Plaintiffs and class members to wait on company premises without such time being recorded in Defendants'

timekeeping system and, without being compensated for such time at least at the applicable FLSA minimum wage and overtime rates of pay.

31. Defendants have and continue to employ tipped employees whose primary duties are to take food and beverage orders, and serve such items to customers.

32. Plaintiffs and all other similarly situated persons are current or former employees of Defendants.

33. Defendants have and continue to employ a uniform electronic time keeping system for tracking and reporting employee hours worked at each of its restaurants.

34. At all times material to this action and, pursuant to Defendants' centralized, unified and uniform plans, policies and practices, Plaintiffs and other members of the class have been required to work in non-tip producing jobs and perform non-tip producing duties while clocked-in as a tipped employee into Defendants' electronic timekeeping system for which such unrelated non-tip producing work Plaintiffs and other members of the class were paid only sub-minimum (tip credit) hourly wages as tipped employees.

35. As a result, Plaintiffs and the other members of the class are entitled to at least the applicable minimum wage for all unrelated non-tip producing work without applying a tip credit.

36. Furthermore, Plaintiffs and other members of the class who have worked in excess of forty hours per week are entitled to receive overtime compensation at the applicable overtime rate of pay for such unrelated non-tip producing work without applying a tip credit.

37. The net effect of Defendants' plan, policy and practice of requiring tipped employees to perform unrelated non-tip producing work while clocked-in as a tipped employee is that

it willfully failed to pay Plaintiffs and other members of the class for all straight time work, minimum wages and overtime compensation in order to save payroll costs and payroll taxes. As a result, Defendants have violated the FLSA and, thereby enjoyed ill-gained profits at the expense of Plaintiffs and the class.

38. In addition to performing work totally unrelated to tip-producing work while clocked into Defendants' uniform electronic timekeeping system as a tipped employee, for which work Plaintiffs and other members of the class were paid only sub-minimum (tip credit) wages, and, pursuant to Defendants' uniform policies and practices, Plaintiffs and other members of the class have been required to perform non-tipped maintenance and preparation work incidental to their server duties, such as rolling silverware, washing dishes and glassware, taking out trash, refilling sugar caddies, salt and pepper shakers, ice, condiments, cleaning chairs, tables, booths, restaurant artifacts and décor, lights, blinds, windows, as well as closing out customers checks and performing pre-closing cleaning tasks, such as vacuuming and/or sweeping the server's assigned area and checking dishes, napkins, and utensils as well as other such "side work" in excess of 20% of their work time. *See* 29 U.S.C. §§ 203(m) and 203(t).

39. As a result, Plaintiffs and other members of the class are entitled to at least the applicable minimum wage for all "side work" without applying a tip credit.

40. Furthermore, Plaintiffs and other members of the class who have worked in excess of forty (40) hours per week are entitled to receive overtime compensation at the applicable overtime rate of pay for all "side work" without applying a tip credit.

41. The net effect of Defendants' plan, policy and practice of requiring tipped employees to perform "side work" for more than 20% of their work time while clocked-in as a tipped

employee is that it willfully failed to pay Plaintiffs and the other members of the class for all straight time work, minimum wages and overtime compensation in order to save payroll costs and payroll taxes. As a consequence, Defendants have violated the FLSA and, thereby enjoyed ill-gained profits at the expense of the Plaintiffs and the class.

42. The U.S. Department of Labor's Fact Sheet #15 provides that "the maximum tip credit that an employer can currently claim under the FLSA is $5.12 per hour (the minimum wage of $7.25 minus the minimum required cash wage of $2.13)."

43. According to the regulation promulgated by the U.S. Department of Labor, "…tips are the property of the employee whether or not the employer has taken a tip credit under section (3) of the FLSA." *See* 29 C.F.R. § 531.52.

44. In addition to the aforementioned FLSA violations committed by Defendants, Plaintiffs and other members of the class have been encouraged, enticed, permitted, condoned, induced, suffered, permitted and/or required to perform prescribed duties "off the clock" before, during and after their regular scheduled shifts.

45. As a result of Plaintiffs and other members of the class performing prescribed duties "off the clock," Defendants' timekeeping records do not reflect the actual total hours worked by Plaintiffs and members of the class.

46. Also, as a consequence of Defendants' timekeeping records not reflecting actual hours worked, when the unpaid "off the clock" work time is added to their recorded time, Plaintiffs and other members of the class who have worked in excess of forty (40) hours per week are entitled to overtime compensation at the applicable overtime rate of pay for such work time.

47. As a consequence of Defendants' timekeeping records not reflecting the actual hours worked by Plaintiffs and other members of the class, when the unpaid "off the clock" work time is added to their recorded time, Plaintiffs and other members of the class who, as a result, will have been paid less than the applicable minimum wage rate required by FLSA, are entitled to minimum wages for all such "off the clock" work time, without applying a tip credit.

48. The net effect of Defendants' plan, policy and practice of encouraging, condoning, enticing, inducing, suffering, permitting and/or requiring Plaintiffs and other members of the class to perform "off the clock" work is that it willfully failed to pay Plaintiffs and other members of the class for all straight time work, minimum wages, and premium pay for overtime work in order to save payroll costs and payroll taxes. As a consequence, Defendants have violated the FLSA and, thereby have enjoyed ill-gained profits at the expense of their tipped employees.

49. In addition to the aforementioned FLSA violations committed by Defendants, Plaintiffs and other members of the class have been required to undergo and/or give job training for which training time was not recorded on Defendants' timekeeping system and thus unpaid.

50. As a result of the required job training time not being recorded on Defendants' timekeeping system, their timekeeping records do not reflect the total hours worked by Plaintiffs and other members of the class.

51. Also, as a consequence of Defendants' timekeeping records not reflecting actual hours worked, when the unpaid training time is added to their recorded time, Plaintiffs and other members of the class who have worked in excess of forty (40) hours per week are

entitled to receive overtime compensation at the applicable overtime rate of pay for such training time.

52. As a consequence of Defendants' timekeeping records not reflecting the actual hours worked by Plaintiffs and other members of the class, when the unpaid training time is added to their recorded time, Plaintiffs and other members of the class who, as a result, will have been paid less than the applicable minimum wage rate required by FLSA, are entitled to minimum wages for all such unpaid training time, without applying a tip credit.

53. The net effect of Defendants' plan, policy and practice of not paying Plaintiffs and class member for required training time is that they willfully failed to pay Plaintiffs and other members of the class for all straight time work, minimum wages, and premium pay for overtime work in order to save payroll costs and payroll taxes. As a consequence, Defendants have violated the FLSA and, thereby have enjoyed ill-gained profits at the expense of their tipped employees.

54. In addition to the aforementioned FLSA violations committed by Defendants, Plaintiffs and other members of the class have been required to attend meetings for which such meetings time was not recorded on Defendants' timekeeping system and thus unpaid.

55. As a result of the required meetings time not being recorded on Defendants' timekeeping system, their timekeeping records do not reflect the total hours worked by Plaintiffs and other members of the class.

56. Also, as a consequence of Defendants' timekeeping records not reflecting actual hours worked, when the unpaid meetings time is added to their recorded time, Plaintiffs and other members of the class who have worked in excess of forty (40) hours per week are

entitled to receive overtime compensation at the applicable overtime rate of pay for such meeting time.

57. As a consequence of Defendants' timekeeping records not reflecting the actual hours worked by Plaintiffs and other members of the class, when the unpaid meetings time is added to their recorded time, Plaintiffs and other members of the class who, as a result, will have been paid less than the applicable minimum wage rate required by FLSA, are entitled to minimum wages for all such unpaid meeting time, without applying a tip credit.

58. The net effect of Defendants' plan, policy and practice of not paying Plaintiffs and class members for required meetings time is that they willfully failed to pay Plaintiffs and other members of the class for all straight time work, minimum wages, and premium pay for overtime work in order to save payroll costs and payroll taxes. As a consequence, Defendants have violated the FLSA and, thereby have enjoyed ill-gained profits at the expense of their tipped employees.

59. In addition to the aforementioned FLSA violations committed by Defendants, Plaintiffs and other members of the class have been required to wait on the Defendants' restaurant premises for which waiting time was not recorded on Defendants' timekeeping system and thus unpaid.

60. As a result of such waiting time not being recorded on Defendants' timekeeping system, their timekeeping records do not reflect the total hours worked by Plaintiffs and other members of the class.

61. Also, as a consequence of Defendants' timekeeping records not reflecting actual hours worked, when the unpaid waiting time is added to their recorded time, Plaintiffs and other

members of the class who have worked in excess of forty (40) hours per week are entitled to receive overtime compensation at the applicable overtime rate of pay for such waiting time.

62. As a consequence of Defendants' timekeeping records not reflecting the actual hours worked by Plaintiffs and other members of the class, when the unpaid waiting time is added to their recorded time, Plaintiffs and other members of the class who, as a result, will have been paid less than the applicable minimum wage rate required by FLSA, are entitled to minimum wages for all such unpaid waiting time, without applying a tip credit.

63. The net effect of Defendants' plan, policy and practice of not paying Plaintiffs and class member for required waiting time is that they willfully failed to pay Plaintiffs and other members of the class for all straight time work, minimum wages, and premium pay for overtime work in order to save payroll costs and payroll taxes. As a consequence, Defendants have violated the FLSA and, thereby have enjoyed ill-gained profits at the expense of their tipped employees.

64. Although at this stage Plaintiffs are unable to state the exact amount owed to them and other members of the class, they believe such information will become available during the course of discovery. However, when an employer fails to keep complete and accurate time records, employees may establish the hours worked solely by their testimony and the burden of proof of overcoming such testimony shifts to the employer.

VI.

COLLECTIVE ACTION ALLEGATIONS

65. Plaintiffs bring this action on behalf of themselves and the class as a collective action pursuant to the FLSA, 29 U.S.C. §§ 206, 207, and 216(b).

66. The claims under the FLSA may be pursued by those who opt-in to this case under 29 U.S.C. § 216(b).

67. The members of the class are so numerous that joinder of all other members of the class is impracticable. While the exact number of the other members of the class is unknown to Plaintiffs at this time and, can only be ascertained through applicable discovery, Plaintiffs believe there are at least thousands of individuals in the class.

68. The claims of Plaintiffs are typical of the claims of the class. Plaintiffs and the other members of the class work or have worked for Defendants at their On The Border (OTB) restaurants and were subject to the same operational, compensation, tip pooling and timekeeping policies and practices, including not being paid for all hours worked at the applicable FLSA minimum wage and overtime rates of pay, under a unified theory of common FLSA violations.

69. Defendants are not entitled to a tip credit for any of its servers because they cannot meet the requirements of Section 203(m).

70. Common questions of law and fact exist as to the class which predominate over any questions only affecting other members of the class individually and include, but are not limited to, the following:

- Whether Plaintiffs and other members of the class were expected and/or required to work hours without compensation;
- Whether Defendants suffered and permitted Plaintiffs and other members of the class to work hours without compensation;
- Whether Defendants failed to pay Plaintiffs and other members of the class all applicable straight time wages for all hours worked;
- Whether Defendants' failed to pay Plaintiffs and the other members of the class the applicable minimum wage for all hours worked;

- Whether Defendants' failed to pay Plaintiffs and other members of the class all overtime compensation due them for all hours worked in excess of forty (40) hours per week;

- Whether Defendants instituted an unlawful mandatory tip pool that disqualifies Defendants from taking a tip credit as to the minimum wage;

- The correct statutes of limitations for Plaintiff's' claims and the claims of the other members of the class;

- Whether Plaintiffs and other members of the class are entitled to damages, including but not limited to liquidated damages, and the measure of the damages; and,

- Whether Defendants are liable for interest, attorneys' interest, fees, and costs.

71. Plaintiffs will fairly and adequately protect the interests of the class as their interests are aligned with those of the other members of the class. Plaintiffs have no interests adverse to the class and, Plaintiffs have retained competent counsel who are experienced in collective action litigation.

72. Collective action mechanism is superior to the other available methods for a fair and efficient adjudication of the controversy. The expenses, costs, and burden of litigation suffered by individual other members of the class in a collective action are relatively small in comparison to the expenses, costs, and burden of litigation of individual actions, making it virtually impossible for other members of the class to individually seek address for the wrongs done to them.

73. Plaintiffs and other members of the class have suffered and will continue to suffer irreparable damage from the unlawful policies, practices, and procedures implemented by Defendants.

COUNT I

FAIR LABOR STANDARDS ACT VIOLATIONS – UNPAID STRAIGHT WAGES
(On Behalf of the Class)

74. Plaintiffs, on behalf of herself and the class, repeat and re-allege Paragraphs 1 through 73 above, as if they were fully set forth herein.

75. At all relevant times, Defendants have been and continue to be an employer engaged in interstate commerce within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

76. At all relevant times, defendants have employed (and/or continue to employ) Plaintiffs and each of the other members of the class within the meaning of the FLSA.

77. At all times relevant, Defendants have had a uniform plan, policy and practice of willfully refusing to pay Plaintiffs and other members of the class for all hours worked at the applicable FLSA minimum wage and overtime rates of pay.

78. At all times herein, Defendants' uniform plan, policy and practice of willfully failing to pay Plaintiff and members of the class at least the required minimum wage rate of $7.25 an hour and, one and one-half times their regular hourly rate of pay for all hours worked in excess of forty (40) within any one week period, involving a variety of unpaid "off the clock" and "edited" time, constitutes a unified theory of common FLSA violations.

79. At all times relevant, Defendants have had actual and/or constructive knowledge of willfully refusing to pay Plaintiffs and other members of the class for all hours worked at least at the applicable FLSA minimum wage and overtime rates of pay.

80. As a result of Defendants' willful failure to compensate Plaintiffs and other members of the class the applicable federal minimum wages for all hours worked, it has violated and continues to violate the FLSA, 29 U.S.C. §§ 201, *et seq.*

81. Defendants' conduct constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

82. Due to Defendants' willful FLSA violations, Plaintiffs and the other members of the class are entitled to recover from Defendants compensation for unpaid wages, an additional equal amount as liquidated damages, as well as interest, reasonable attorneys' fees, costs, and disbursements relating to this action for the three-year statutory period under the FLSA, 29 U.S.C. § 216(b).

COUNT II

FAIR LABOR STANDARDS ACT VIOLATIONS – OVERTIME
(On Behalf of the Class)

83. Plaintiffs, on behalf of themselves and other members of the class, repeat and re-allege Paragraphs 1 through 82 above as if they were set forth herein.

84. At all times relevant herein, Defendants have been and continue to be an employer engaged in interstate commerce within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

85. At all times relevant herein, Defendants have employed (and/or continue to employ) Plaintiffs and each of the other members of the class within the meaning of the FLSA.

86. At all times relevant herein, Defendants have had a uniform plan, policy and practice of willfully refusing to pay Plaintiffs and other members of class appropriate overtime compensation for all hours worked in excess of forty hours per week by Plaintiffs and each of the other members of the class.

87. At all times herein, Defendants' uniform plan, policy and practice of willfully failing to pay Plaintiffs and members of the class at least the required minimum wage rate of $7.25

an hour and, one and one-half times their regular hourly rate of pay for all hours worked in excess of forty (40) within any one week period, involving a variety of unpaid "off the clock" and, "edited" time, constitutes a unified theory of common FLSA violations.

88. At all times relevant herein, Defendants have had actual and/or constructive knowledge of willfully refusing to pay Plaintiffs and other members of the class for all hours worked.

89. As a result of Defendants' willful failure to compensate Plaintiffs and other members of the class the applicable federal minimum wage for all hours worked at a rate not less than one and one-half times the regular rate of pay for work performed in excess of forty (40) hours per work week, it has violated and (continues to violate) the FLSA, 29 U.S.C. § 255(a).

90. Due to Defendants' willful FLSA violations, Plaintiffs and the other members of the class are entitled to recover from Defendants compensation for unpaid overtime wages, an additional equal amount as liquidated damages, as well as interest, reasonable attorneys' fees, costs, and disbursements relating to this action for the three-year statutory period under the FLSA, 29 U.S.C. § 216(b).

COUNT III

FAIR LABOR STANDARDS ACT VIOLATIONS – MINIMUM WAGE
(On Behalf of the Class)

91. Plaintiffs, on behalf of themselves and other members of the class, repeat and re-allege Paragraphs 1 through 90 above as if they were fully set forth herein.

92. At all times relevant herein, Defendants have been and continue to be an employer engaged in interstate commerce within the meaning of the FLSA, 29 U.S.C. § 206(a) and 207(a).

93. Pursuant to Defendants' uniform compensation policies, it has failed to pay Plaintiffs and other members of the class the applicable minimum wage rates as required by the FLSA.

94 Because of Defendants' failure to pay Plaintiffs and other members of the class for all hours worked, Plaintiffs and other members of the class have not received wages equal to or in excess of the applicable minimum wage as required by the FLSA for all hours worked.

95. At all times herein, Defendants' uniform plan, policy and practice of willfully failing to pay Plaintiffs and members of the class at least the required minimum wage rate of $7.25 an hour and, one and one-half times their regular hourly rate of pay for all hours worked in excess of forty (40) within any one week period, involving a variety of unpaid "off the clock" and "edited" time, constitutes a unified theory of common FLSA violations.

96 At all times relevant, Defendants had actual and/or constructive knowledge of willfully refusing to pay Plaintiffs and other members of the class for all hours worked.

97 As a result of Defendants' willful failure to compensate Plaintiffs and other members of the class for at least the applicable minimum wage rate, it has violated and continues to violate the FLSA.

98. Plaintiffs and the other members of the class are therefore entitled to compensation for unpaid minimum wages at an hourly rate required by the FLSA, plus applicable overtime compensation and an additional amount as liquidated damages, together with interest, costs, and reasonable attorney's fees for the three-year statutory period under the FLSA.

COUNT IV

FAIR LABOR STANDARDS ACT VIOLATIONS – UNLAWFUL TIP POOL
(On Behalf of the Class)

99. Plaintiffs, on behalf of themselves and other members of the class, repeat and re-allege Paragraphs 1 through 98 above as if they were fully set forth herein.

100. Defendants cannot claim a tip credit for any tips Plaintiffs received from Defendants' customers. Defendants cannot establish they complied with the tip credit provisions of Section 203(m). *See* 29 U.S.C. § 203(m). Defendants required Plaintiffs and the Class to give (share) a portion of their tips to ineligible employees not entitled to receive them.

101. Defendants showed reckless disregard for whether their tip pool practices violated the provisions of the FLSA.

PRAYER FOR RELIEF

Whereas, Plaintiffs, individually, and/or on behalf of themselves and all other similarly situated other members of the class, request this Court to grant the following relief against Defendants:

A. Designation of this cause as a collective action on behalf of the class and promptly issue notice pursuant to 29 U.S.C. § 216(a), apprising class members of the pendency of this action and permitting other members of the class to assert timely FLSA claims in this action by filing individual Consents under 29 U.S.C. § 216(b);

B. On Count I, an award of compensation for unpaid wages to Plaintiffs and other members of the class;

C. On Count II, an award of compensation for unpaid overtime to Plaintiffs and the other members of the class;

D. On Count III, an award of compensation for unpaid minimum wages to Plaintiffs and other members of the class at the applicable minimum wage rate as required by the FLSA;

E. On Count IV, an award of compensation for unpaid minimum and overtime wages to Plaintiffs and other members of the class at the applicable minimum and overtime wage rates as required by the FLSA;

F. On Counts I, II, III, and IV an award of liquidated damages to Plaintiffs and other members of the class;

G. On Counts I, II, III, and IV an award of prejudgment and post-judgment interest at the applicable legal rate to Plaintiffs and other members of the class;

H. On Counts I, II, III, and IV an award of costs, expenses, and disbursements relating to this action together with reasonable attorneys' fees and expert fees to Plaintiffs and other members of the class;

I. On Counts I, II, III, and IV a ruling that the three-year statutory period for willful violations under the FLSA shall apply in this action, and

J. Such other general and specific relief as this Court deems just and proper.

JURY TRIAL DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a **trial by jury** on all issues so triable.

Dated: November 28, 2016

Respectfully Submitted,

s/ Gordon E. Jackson

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Attorneys for Named Plaintiffs, on behalf of themselves and all other similarly situated current and former employees